

AO 91 (Rev. 11/11) Criminal Complaint

## UNITED STATES DISTRICT COURT

for the

Northern District of New York

United States of America )

v. )

Robert A. Butler )

Case No. )

1:13-M-277(CFH) )

Defendant(s)

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED  
JUN 04 2013  
LAWRENCE K. BAERMAN, CLERK  
ALBANY

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of May 2, 2013 in the county of Schenectady in the  
Northern District of New York, the defendant(s) violated:

## Code Section

Title 18, United States Code,  
Section 844(i)

## Offense Description

In that the defendant, Robert A. Butler, maliciously damaged and destroyed,  
by means of fire and explosive materials, the building at 438 Hulett Street,  
Schenectady, New York, and other real and personal property there, used in  
interstate commerce and in an activity affecting interstate commerce.

This criminal complaint is based on these facts:

See attached affidavit

☒ Continued on the attached sheet.


Complainant's signature

Special Agent Mark P. Meeks, ATF

Printed name and title

Sworn to before me and signed in my presence.

Date: 06/04/2013


Judge's signature

City and state: Albany, New York

Hon. Christian F. Hummel, U.S. Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF COMPLAINT**

I, Mark P. Meeks, having been first duly sworn, do hereby state as follows:

1. I am a special agent with the U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), and have been so employed for thirteen years. Throughout that time, I have been assigned to the Albany Field Office and the Schenectady Fire Department Fire Investigation Unit. I investigate violations of the federal and New York State arson, firearm, and explosives laws. In addition to my training as a special agent, I have received additional training in fire origin and cause investigation at the national Fire Academy in Emmitsburg, Maryland and the ATF Fire Research Laboratory in Ammendale, Maryland. I have also completed approximately 80 hours of online fire investigation training through the International Association of Arson Investigators (IAAI).
2. This affidavit is submitted in support of an application for a complaint charging Robert A. Butler with maliciously damaging and destroying, by means of fire and an explosive, a building and other real and personal property used in interstate commerce and in an activity affecting interstate commerce, resulting in personal injury and death, in violation of 18 U.S.C. § 844(i).
3. This affidavit is based upon my personal involvement in this investigation, my training and experience, my review of relevant evidence, and information supplied to me by other law enforcement officers. It does not include each and every fact known to me about the investigation, but rather only those facts that I believe are sufficient to establish the requisite probable cause.

**FACTS AND CIRCUMSTANCES**

4. On May 2, 2013, the City of Schenectady Fire Department contacted me and asked me to participate in a joint investigation of a fire which occurred at 438 Hulett Street in Schenectady, New York. The Fire Department was dispatched to the fire at about 4:24 a.m. The fire and the resulting

smoke and carbon monoxide caused the deaths of four people: David Terry, age 32, and three children: Michael Terry, age 3; Layah Terry, age 2; and Donovan Duell, who was 11 months old, and put Safyre Terry, age 5, in the hospital with severe injuries. The building and the personal property inside were destroyed. The building had to be taken down and removed.

5. The building at 438 Hulett Street is a wood-framed, two-family rental property with one rental unit on the first floor, and one rental unit on the second floor. There are two co-owners of the building; neither resides there, but one of them resides in Schenectady. The co-owner who resides in Schenectady has advised that the two units were rented to different people, which is also reflected in City of Schenectady rental certificate inspection forms. The co-owner advised he received rent from the tenants of both units, and that part of the rent for the second floor unit was paid directly by the Department of Social Services. The co-owner advised that the occupants of the second floor unit included David Terry, the four children, and Jennica Duell, the children's mother. Two other men also resided in the second floor apartment at the time of the fire.

6. On May 2-3, and 6, 2013, federal, state, and local fire investigators performed a systematic fire scene examination of 438 Hulett Street. The team of more than a dozen investigators included an ATF Senior Special Agent/Certified Fire Investigator, an ATF Electrical Engineer, and an ATF Fire Protection Engineer. After analyzing the construction of 438 Hulett Street, the extent, location, and type of fire damage to the structure and its contents, physical debris, fire suppression efforts, witness statements, and other evidence, all participating fire investigators agreed that the fire started in the stairwell leading to the second floor apartment of 438 Hulett Street. All participating fire investigators also agreed, based on the fire's area of origin, analysis of physical debris and competent ignition sources, as well as other physical evidence, that a human set the fire intentionally by

applying an open heat source to gasoline that was introduced into the stairwell leading to the second floor apartment.

7. A Forensic Chemist at the ATF Forensic Science Laboratory has analyzed fire debris taken from the hallway and stairway leading to the second floor apartment at 438 Hulett Street and found three exhibits of the fire debris to contain gasoline.

8. Witnesses have given sworn statements reflecting their personal knowledge that:

- a. Robert A. Butler had also resided at 438 Hulett Street and had been the boyfriend of Jennica Duell. David Terry threw Butler out when he understood Butler to have hit Duell. Threatening communications from and concerning Terry and Butler were exchanged using the mobile phones of others. [Some such communications have been retrieved, including the following: On April 29, 2013, a friend of Butler sent a text message saying, “get ahold of [name omitted 1] because robs about to go to schenectady to split some wigs.” A little later, Butler’s friend sent another text message that “Rob wants to kill [name omitted 2] and his two friends for fucking with his and jennicas life she is going to get violated on probhation nd go to prision nd loose the kids he is on the verge of flipping.” [sic]. “[Name omitted 2] and his two friends” is believed to refer to the three adult male occupants of the second floor apartment at 438 Hulett Street, including David Terry. On April 30, 2013, Butler used his friend’s phone to send text messages stating that he and his daughter had been threatened, stating “apparently I’m dead if I go to schenectady.”]
- b. The night of May 1, 2013, Butler was with friends in Saratoga Springs, and Butler and most of the others were using drugs. Negative statements about David Terry

were made and Butler said he would take care of it, or words to that effect (apparently referring to Terry).

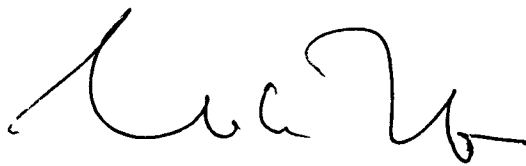
- c. In the early morning hours of May 2, 2013, Butler and three others went to Hulett Street in Schenectady. On the way, Butler said something about killing David Terry, or words to that effect. They stopped and got gasoline. When they arrived at Hulett Street, Butler got out of the car, went to the trunk, and poured gasoline into a clear bottle. Butler walked to the building at 438 Hulett Street with the other three people nearby. Butler walked into the building through the door which led to the stairs used to access the second story rental unit and, though one person yelled “no,” Butler distributed gasoline around and lit the fire. The person who yelled “no” was brought back to the car and the four people returned to Saratoga Springs. Butler told the others that “we were never here,” and “we were in Saratoga all night,” or words to that effect.

9. Later on May 2, 2013, Butler and two of the other three were interviewed by police. While Butler was waiting in an interview room at the Schenectady Police Department, he was recorded saying, “I didn’t want to do it, Jennica, the kids,” or words to that effect. Butler told detectives that he had not committed the arson and had been in Saratoga all night. The other two people initially also said they had been in Saratoga all night, but later gave sworn statements describing their presence with Butler in Schenectady when he set the fire. Their statements, and those of other witnesses, have developed over time, and there are some inconsistencies between witness accounts of the route of travel, acquisition of gasoline, and other details. However, after recanting their initial echoing of Butler’s alibi, both eyewitnesses have consistently stated that Butler set the fire.

10. One detective who interviewed Butler on May 2, 2013 smelled gasoline on Butler. Later forensic examination of Butler's clothing did not reveal any continuing presence of gasoline.

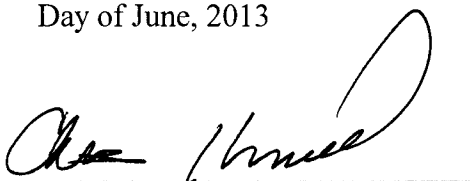
**CONCLUSION**

11. Based upon the above information, there is probable cause to believe that on or about May 2, 2013, Robert A. Butler violated Title 18, United States Code, Section 844(i) (malicious destruction of rental property by means of fire and an explosive, resulting in death and personal injury). Accordingly, I respectfully request that the Court issue a complaint charging Robert A. Butler with that crime.



Mark P. Meeks  
Special Agent  
U.S Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Sworn to me this 4th  
Day of June, 2013



Hon. Christian F. Hummel  
United States Magistrate Judge